



STEVEN L. BESHEAR  
GOVERNOR

**EXECUTIVE ORDER**


Secretary of State  
Frankfort  
Kentucky

2012-449  
June 21, 2012

By virtue of the authority vested in me by Section 12.210(1) of the Kentucky Revised Statutes, and as Governor of the Commonwealth of Kentucky, I, Steven L. Beshear, do hereby approve an employment contract between the **Kentucky Transportation Cabinet**, and **Morgan & Pottinger, PSC**, Louisville, Kentucky as outlined in the attached Contract.

Please enter this Executive Order upon the Executive Journal and file the attached Contract with the Executive Order.

  
STEVEN L. BESHEAR  
Governor

  
ALISON LUNDERGAN GRIMES  
Secretary of State

RECEIVED AND FILED

DATE 6/21/12

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ALISON LUNDERGAN GRIMES  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. J. J. J.



# Commonwealth of Kentucky

## CONTRACT

Show Doc ID number on all packages,  
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**Doc Description:** Legal Services FY13-14

**Doc ID No:** PON2 605 1200003070 1

**Procurement Folder:** 2505201

**Procurement Type:** Personal Service Contract

**Administered By:** REBECCA GOODMAN

**Cited Authority:** FAP111-43-00-L

**Telephone:** 502-564-7650

**Issued By:** Laura Stephens

MORGAN AND POTTINGER

601. W. Main Street

Louisville

KY 40202

US

1	Legal Services	2012-06-01	0.00	0.00000	200,000.00	200,000.00
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### Extended Description

The services shall include, but not be limited to: Representation of the Cabinet at all levels of the court system and/or before administrative bodies where the Cabinet may be a party; providing legal advice and assistance to the Cabinet on all matters within its jurisdiction; conducting title examinations and preparing title opinions; condemnation; Board of Claims and Workers' Compensation defense, and Miscellaneous matters (e.g., including delinquent highway use tax, bankruptcy, environmental, utility, contractual, subrogation, Personnel Board, employment and other areas as required).

426643

KYTC OFFICE OF LEGAL SERVICES  
200 MERO STREET

FRANKFORT  
US

KY 40622

426643

KYTC OFFICE OF LEGAL SERVICES  
200 MERO STREET

FRANKFORT  
US

KY 40622

200,000.00

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**PERSONAL SERVICE CONTRACT**  
**Kentucky Transportation Cabinet**  
**Legal Services**

**Vendor**

Morgan & Pottinger, PSC  
133 West Short St  
Lexington, KY 40202  
Phone: 859-253-1900  
Contact Name: Scott White  
Email: tsw@m-p.net

**SECTION 1 – ADMINISTRATIVE OVERVIEW**

**1.00 Purpose and Background**

The Transportation Cabinet requests the services of attorneys to represent the Cabinet. The services shall include, but not be limited to: Representation of the Cabinet at all levels of the court system and/or before administrative bodies where the Cabinet may be a party; providing legal advice and assistance to the Cabinet on all matters within its jurisdiction; conducting title examinations and preparing title opinions; condemnation; Board of Claims and Workers' Compensation defense, and Miscellaneous matters (e.g., including delinquent highway use tax, bankruptcy, environmental, utility, contractual, subrogation, Personnel Board, employment and other areas as required).

**1.05 Issuing Office**

The Transportation Cabinet is issuing this contract for Legal Services. The Agency Contact is the only person authorized to change, modify, amend, alter or clarify the specifications and the terms and conditions of this contract. No contractor shall subcontract any services under the awarded contracts.

**SECTION 2 – SCOPE OF WORK**

**2.00 Scope of Work**

The Cabinet carries out its executive branch functions and activities throughout the Commonwealth of Kentucky, and therefore desires to acquire the services of competent attorneys for the purpose of

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performing a variety of other professional legal services such as, but not limited to, performing legal research, rendering legal opinions, and representing the Cabinet and its employees in various actions before administrative bodies and in litigation before federal and/or state courts.

The Cabinet is now engaged in acquiring titles to certain parcels of land in counties throughout the Commonwealth of Kentucky for the improvement and construction of public improvements and roads and therefore desires to have an accurate title examination of each parcel, or interest in land, needed for the construction of public improvements and the improvement and/or construction of roads.

The Cabinet is now engaged in acquiring right of way and other properties in counties throughout the Commonwealth and therefore desires to acquire the service of competent attorneys specifically for the purpose of preparing condemnation actions, commencing actions in Circuit Court and prosecuting them to completion.

## **2.01 Title Work**

1. Cabinet agrees to furnish Attorney with the source of title of the present owners by book and page number, or the best information it can obtain, and to furnish Attorney with a plan sheet accurately showing the portion of the assigned parcel for which the title examination is to be made.
2. Attorney agrees to accurately and conscientiously perform the services contracted for herein, to complete the title certification and deliver same to the designated representatives of Cabinet within the time limits fixed at the time said list of parcels and other information is delivered to the Attorney.
3. Attorney agrees to make a complete examination of each title so requested, extending backward from the present time for a period of no less than thirty-five (35) years, and to make a complete certificate as to the status of said title in the present owner as of the date of said examination, same to include any interest in minerals.
4. In addition to the title examination backward for a period of not less than thirty-five (35) years as described in paragraph (3) above, upon request of Cabinet, and the showing of the necessity therefore, Attorney agrees to carry any of the aforesaid title examinations back in time sufficient

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to determine the present ownership and interest in minerals involved under any such tract.

5. Cabinet agrees to consider any branching or dividing of source of title occurring with fifteen (15) years extending backward from the date of the assignment as separate sources of title and to compensate accordingly, but not to exceed two (2) additional sources unless specifically authorized by Cabinet.
6. Title Reports: KYTC was granted an exemption from the LRC Government Contract Review Committee (GCRC) Policy Statement 99-1 as it applies to title examination services. The approved exemption permits KYTC to pay the hourly rate under this contract, however, mineral title opinions are capped at \$1500 per title opinion. In no event shall KYTC be required to pay in excess of the cap for mineral titles unless prior approval to exceed the cap has been obtained from KYTC.
7. In the event that Cabinet terminates and cancels this agreement pursuant to the terms of this Contract, Attorney agrees to deliver to Cabinet all reports of title examined to the date of said cancellation, with Cabinet agreeing to compensate Attorney per parcel as set forth above for whatever work has actually been done to said date and such payment shall constitute compensation in full.
8. Subject to Attorney's right to decline such assignments for any reason whatsoever, Attorney agrees when called upon under the terms and conditions of an inter-Cabinet agreement between Cabinet and other Agencies of the government of the Commonwealth of Kentucky to examine such titles as may be assigned to him and submit title information, in the form prescribed by said Agencies, and under terms, conditions and compensation agreed to at the time of assignment between Attorney and said other Agencies or Cabinet.

## **2.02 Condemnation**

1. Attorney shall represent Cabinet in actions as assigned by Cabinet in accordance with the policies and procedures of Cabinet. Attorney shall have responsibility for the litigation from the time the action is assigned to him/her to its completion or until withdrawn by Cabinet. Cabinet shall furnish

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to Attorney a work file that will contain the necessary information including the approved appraisal of Cabinet at the time the action is assigned.

2. Subject to attorney's right to decline such assignments for any reason whatsoever, Attorney agrees when called upon under terms and conditions of an inter-Cabinet agreement between Cabinet and other Agencies of the government of the Commonwealth of Kentucky to practice condemnation cases as may be assigned to him/her under the terms, conditions and compensation agreed to at the time of each assignment.
  
3. The Attorney shall be paid for his services described in this section [except under sub-paragraph (2) of this section] at the rate set forth in Section IV of this contract. Cabinet will make payment for such services, upon the timely submission of a statement from Attorney and subsequent acceptance thereof by Cabinet, and upon the completion of the action in the Circuit Court or Appellate court if applicable. Where a monetary judgment is obtained in favor of the Cabinet, the action shall be considered complete at the earlier of satisfaction of the judgment or the filing a judgment lien against the judgment debtor.
  
4. With reference to any litigation referred to herein, Cabinet agrees to provide location and securing of assistance (when feasible) in the preparation of exhibits, witnesses, photographs, documents and other information for use in the representation of assigned actions. Additionally, the facilities of Cabinet shall be made available for the use of Attorney, and Attorney shall use such facilities (if feasible) in order to avoid incurring expenses from outside sources. Where additional assistance for the representation in any action is necessary in the preparation of exhibits, obtaining photographs, hiring expert witnesses, or obtaining documents or information which cannot be supplied by Cabinet, Attorney shall request and receive approval of Cabinet prior to incurring any expenses from outside sources.
  
5. Attorney agrees that any and all information obtained by Attorney in connection with the preparation of condemnation litigation is the property of Cabinet, and will not be divulged or used in any manner except by the specific written direction of Cabinet.
  
6. Cabinet shall make payment for approved services from outside sources upon submission of a statement which has been approved for payment by Attorney. All such statements shall be

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identified by the style of action, project parcel, civil action numbers, and the name of the designated Highway District Office overseeing the proposed project.

7. Cabinet will provide a response (in writing except where such is not feasible) to proposed terms of settlement or agreed final disposition of any litigation and, except as hereinafter set forth, Attorney shall make no agreement or commitment in connection with the final disposition of any action without prior written approval. Verbal approval given by Cabinet shall be immediately confirmed by written recommendation of Attorney in accordance with Cabinet's policy and procedure (which shall be provided by Cabinet upon request).
8. The Cabinet shall direct Attorney to appeal or not to appeal any appealable order entered by a court. Attorney agrees to perfect an appeal or defend an appeal when so directed. This service shall include all necessary steps, including, but not limited to, review of records and transcripts, research of case law, preparation of an appellate brief and necessary reply briefs and oral arguments. Each appeal to a successive level of the court system shall be considered by Cabinet as a separate appeal.
9. Cabinet shall make direct payment for costs incurred in an appeal (e.g., transcripts of record). Reproduction or printing of briefs will be performed by Cabinet or paid directly by Cabinet. Request for approval of all outside costs to be incurred in an appeal shall be conducted as set forth in paragraph (4) above.

### **2.03 Administrative Actions**

1. Attorney shall represent Cabinet and/or its employees in administrative actions as assigned by Cabinet in accordance with the policies and procedures of Cabinet. These actions may include, without limitation, those before the Board of Tax Appeals, the Board of Claims, the Personnel Board, and intra-Cabinet administrative hearings. Attorney shall have responsibility for the litigation from the time the action is assigned to him/her to its completion or until withdrawn by Cabinet. Cabinet shall furnish to Attorney a work file that will contain the necessary information at the time the action is assigned.
2. The Attorney shall be paid for his services described in this section [except under sub-paragraph (2)



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of this section] at the rate set forth in Section IV of this contract. Cabinet will make payment for such services, upon the timely submission of a statement from Attorney and subsequent acceptance thereof by Cabinet, and upon the completion of the action.

3. With reference to any litigation referred to herein, Cabinet agrees to provide location and securing of assistance (when feasible) in the preparation of exhibits, witnesses, photographs, documents and other information for use in the representation of assigned actions. Additionally, the facilities of Cabinet shall be made available for the use of Attorney, and Attorney shall use such facilities (if feasible) in order to avoid incurring expenses from outside sources. Where additional assistance for the representation in any action is necessary in the preparation of exhibits, obtaining photographs, hiring expert witnesses, or obtaining documents or information which cannot be supplied by Cabinet, Attorney shall request and receive approval of Cabinet prior to incurring any expenses from outside sources.
4. Attorney agrees that any and all information obtained by Attorney in connection with the administrative litigation is the property of Cabinet, and will not be divulged or used in any manner except by the specific written direction of Cabinet.
5. Cabinet shall make payment for approved services from outside sources upon submission of a statement which has been approved for payment by Attorney. All such statements shall be identified, where applicable, by the style of action, civil action number(s), the name of the county where the action lies, and the license numbers of the opposing parties.
6. Cabinet will provide a response (in writing except where such is not feasible) to proposed terms of settlement or agreed final disposition of any litigation and, except as hereinafter set forth, Attorney shall make no agreement or commitment in connection with the final disposition of any action without prior written approval. Verbal approval given by Cabinet shall be immediately confirmed by written recommendation of Attorney in accordance with Cabinet's policy and procedure (which shall be provided by Cabinet upon request).
7. The Cabinet shall direct Attorney to appeal or not to appeal any appealable order entered by a hearing officer, board, or court. Attorney agrees to perfect an appeal or defend an appeal when so directed. This service shall include all necessary steps, including, but not limited to, review of

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records and transcripts, research of case law, preparation of an appellate brief and necessary reply briefs and oral arguments. Each appeal to a successive level of the adjudicative system shall be considered by Cabinet as a separate appeal.

8. Cabinet shall make direct payment for costs incurred in an appeal, i.e., transcripts of record. Reproduction or printing of briefs will be performed by Cabinet or paid directly by Cabinet. Request for approval of all outside costs to be incurred in an appeal shall be conducted as set forth in paragraph (3) above.

#### **2.04 Miscellaneous Legal Services**

1. Upon assignment by Cabinet, and subject to Attorney's rights to decline any such assignment for any reason whatsoever, Attorney shall perform such legal services as requested by Cabinet, including, but not limited to, performing legal research, rendering legal opinions, and representing the Cabinet and its employees in litigation before the courts until the matter is completed, concluded or withdrawn.
2. Attorney agrees to accept assignments by Cabinet (with the same rights of rejection as set forth in (1)) for and on behalf of other Agencies of the government of the Commonwealth of Kentucky under the terms and conditions of an inter-Cabinet agreement between Cabinet and other Agencies and compensation to attorney shall be made under this section of this agreement unless otherwise specified at the time of assignment.
3. Whenever feasible, Cabinet agrees to prepare exhibits, provide witnesses, photographs, documents and information for use in representation of assigned actions. Additionally, the facilities of Cabinet shall be made available for the use of Attorney, if feasible, in order to avoid incurring expenses from outside sources. Where additional assistance for the representation in any action is necessary in the preparation of exhibits, obtaining photographs, hiring expert witnesses, or obtaining documents or information and said assistance cannot be supplied by Cabinet, Attorney shall request approval of the Cabinet prior to incurring any expenses from outside sources. Attorney agrees that any and all information obtained by the Attorney in connection with the preparation of litigation is the property of Cabinet, and will not be divulged or used in any manner except by the specific written direction of Cabinet.

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4. Cabinet shall make direct payment for approved services from outside sources, upon submission of a statement, which has been approved for payment by the Attorney. All such statements shall be identified by the style of the action, the civil action number and the name of the responsible staff attorney in the Cabinet's Office of Legal Services.
  
5. Except as hereinafter set forth, Cabinet shall first give a written response to a proposed settlement or agreed final disposition of any litigation and Attorney shall make no agreement or commitment in connection with the final disposition of any action without said prior written approval. If verbal approval is given by Cabinet, said approval shall be immediately confirmed by written recommendation of Attorney in accordance with Cabinet's policy and procedure (which shall be provided by Cabinet upon request).
  
6. Cabinet agrees to pay Attorney for services on any cases or matters assigned under this Section III of this contract on a "rate per hour" basis, not to exceed \$125.00 per hour for Partner and \$100.00 per hour for Associate. Charges for clerical, secretarial and other support staff shall not be paid. Attorney agrees to bill in increments of one-tenths of an hour. Paralegal fees will be paid for authorized services only and at an hourly rate not to exceed \$40.00 per hour. Specific rates for requested services will be established at the time of assignment.
  
7. Reimbursable expenses shall also be paid and requests for payment of such expenses shall be made on the monthly billing statement described in paragraph (9), below. "Reimbursable expenses" shall mean those out-of-pocket expenses incurred in the representation of Cabinet under this Section III of the contract. Such reimbursable expenses shall be limited to long-distance phone calls, computerized legal research, and copies (at \$0.10 per page). However, Attorney shall not conduct any computerized legal research unless it is deemed necessary by the supervising Cabinet attorney. In such cases, the Cabinet will only reimburse Attorney for charges for research beyond the scope of any "basic" or "flat rate" subscription service Attorney otherwise incurs as an ongoing cost of doing business or as overhead. Cabinet must give prior written approval to reimburse for any other expense. Attorney shall elect whether to receive reimbursement for mileage, or charge on a per hour basis for the time expended while traveling. (See terms of LRC Policy Statement #98-1, attached hereto.) Reimbursement shall be in accordance with the provisions established by the Commonwealth of Kentucky Travel and

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Expense Regulations. When necessary and with written approval in advance by Cabinet, overnight lodging, airfare, or other extraordinary expenses shall be paid with proper documentation. Original receipts authenticated by Attorney shall be required for all out-of-office expenditures of Two Dollars (\$2.00) or more.

8. For all work performed under this Section IV, bills shall be submitted monthly by Attorney in a form approved in advance in writing by Cabinet. Such form shall contain all elements shown on the attached billing example, including the style of the case, the civil action number, the type of case, the name of supervising Cabinet attorney(s), Cabinet's file or identifying matter number, Attorney file or matter number, the date of each service performed, a description of each service in detail, the initials of the attorney performing each service, the hourly rate charged for that attorney, the time spent by that attorney on that service (shown in tenths of an hour), the total amount incurred for that service and total amount due for professional services. Reimbursable expenses shall be listed in detail at the end of each bill with copies of any necessary receipts and approvals attached. Items to be included on bills, such as specific attorneys' hourly rates, may be contained in a summary accompanying the actual bill.

All bills shall be submitted monthly, no later than fifteen days from the date of the last day of each calendar month, and during the fiscal year in which the services were rendered. KRS 45.231(1) states, "Any claim against any agency, department, or budget unit not presented or encumbered for payment within the fiscal year in which the obligation was incurred may, after determination by the secretary of the Finance and Administration Cabinet, be found to be a valid claim against the Commonwealth, and may be authorized for payment out of the appropriation for the prior year claims, provided that the agency department, or budget unit had an available balance sufficient to pay the obligation at the close of the fiscal year in which the obligation was incurred. All claims authorized to be paid under this section shall be limited to those incurred during the two (2) preceding fiscal years, and the total of such claims paid for any one (1) agency, department, or budget unit shall not exceed the available balance remaining to the credit of such agency, department, or budget unit at the close of the fiscal year in which the obligations were incurred." Thus any claims prior to the preceding two fiscal years must be submitted to and processed through the Kentucky General Assembly.

At such time that it becomes necessary to request additional funding of Attorney's personal

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service contract, the Cabinet shall provide written notification to Attorney of the requested increase in funding.

With this written notification, and in case of necessity only, Attorney may be requested to withhold submitting invoices for services performed until Cabinet has been notified the increase in funding has been approved. Cabinet will provide written notification upon the approval of additional funding and Attorney will be requested to submit invoices at this time.

Alternatively, the Cabinet may direct Attorney to forego further work on the assignment. Attorney's failure to submit bills within fifteen (15) days of months' end may result in cancellation of Attorney's contract and in this respect, Attorney acknowledges the Office of Legal Services' obligation to the Cabinet and the Commonwealth to closely monitor and manage the available funding for outside legal services.

**Pursuant to KRS 45A.695, no payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.**

\*Invoice form is available on the Legislative Research Commission, Government Contract Review Committee website: <http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

9. Cabinet shall direct Attorney to appeal or not to appeal any appealable order entered by a court. Attorney agrees to perfect an appeal or defend an appeal when so directed at the fee described in this contract. This service shall include all necessary steps, including, but not limited to, review of record and transcript, research of case law, preparation of appellate brief and necessary reply briefs and oral arguments.
10. Cabinet shall make direct payment for costs incurred in an appeal (e.g., transcripts of record). Reproduction and printing of briefs shall be performed by Cabinet or paid directly by Cabinet. Where additional assistance for the representation in any action is necessary in the preparation of exhibits, obtaining photographs, hiring expert witnesses, or obtaining documents or information which cannot be supplied by the Cabinet, Attorney shall request and receive written approval of the Cabinet prior to incurring any expenses from outside sources. Statement of all outside costs

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incurred in an appeal shall be reviewed and approved for payment by Attorney and submitted to the designated supervising or responsible attorney in the Office of Legal Services. Statements shall be identified as to style of action, type of case and civil action number.

### **SECTION 3 – TERMS AND CONDITIONS**

#### **3.00 Beginning of Work**

This Contract is not effective and binding until approved by the Secretary of the Finance and Administration Cabinet and filed with the Legislative Research Commission's Government Contract Review Committee. The Contractor shall not commence any billable work until a valid Contract has been fully executed. The Contract shall represent the entire agreement between the parties. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

#### **3.05 Contract Components and Order of Precedence**

The Commonwealth's acceptance of the Contractor's offer in response to the Solicitation, indicated by the issuance of a Contract Award, shall create a valid contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. Any Addenda to the Solicitation;
3. The Solicitation and all attachments hereto;
4. PSC Standard Terms and Conditions;
5. Any Best and Final Offer;
6. Any clarifications concerning the Contractor's proposal in response to the Solicitation;
7. The Contractor's proposal in response to the Solicitation.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

#### **3.10 Contract Term and Renewal Option**

The initial term of the Contract is anticipated to be from July 1, 2012 through June 30, 2014.

This agreement is not effective until the Secretary of the Finance and Administration Cabinet or his

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authorized designee has approved the contract and until the contract has been filed with the Legislative Research Commission, Government Contract Review Committee.

The Commonwealth reserves the right to renew this contract for up to one (1) additional two (2) year period.

Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705

### **3.15 Changes and Modifications to the Contract**

Pursuant to 200 KAR 5:311, no modification or change of any provision in the Contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment by the Transportation Cabinet prior to the effective date of such modification or change. Modification shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee. Memoranda of Understanding, written clarification, and/or correspondence shall not be construed as amendments to the Contract.

### **3.20 Notices**

Unless otherwise instructed, all notices, consents, and other communications required and/or permitted by the Contract shall be in writing.

After the award of the Contract, all programmatic communications are to be made to the Agency Contact listed below, with a copy to the Buyer listed below. After the award of the Contract, all communications of a contractual or legal nature are to be made to the Buyer listed below.

**Agency Contact:** Rebecca Goodman  
Kentucky Transportation Cabinet  
Office of Legal Services  
200 Mero St., 6<sup>th</sup> Floor West  
Frankfort, KY 40622  
502-564-7650

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Rebecca.Goodman@ky.gov

**Buyer:** Laura Stephens, CPPB  
Kentucky Transportation Cabinet  
Division of Purchases  
200 Mero St., 4<sup>th</sup> Floor East  
Frankfort, KY 40622  
502-564-4630  
Laura.Stephens@ky.gov

**PSC STANDARD TERMS AND CONDITIONS**  
**Revised January 2012**

**Whereas**, the first party, the state agency, has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and

**Whereas**, the second party, the contractor, is available and qualified to perform such function; and

**Whereas**, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

**NOW THEREFORE**, the following terms and conditions are applicable to this contract:

**010.00 Effective Date:**

This agreement is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Legislative Research Commission, Government Contract Review Committee ("LRC").

Payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if



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the agency has been granted delegation authority by the Secretary.

**010.05 Renewals:**

Upon expiration of the initial term, the contract may be renewed in accordance with the terms and conditions in the original solicitation. Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705, and contingent upon available funding.

**010.10 LRC Policies:**

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage (<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>) and would impact any contract established under KRS 45A.690 et seq., where applicable.

**010.15 Choice of Law and Forum:**

All questions as to the execution, validity, interpretation, construction and performance of this agreement shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this agreement shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

**010.20 Cancellation:**

The state agency shall have the right to terminate and cancel this agreement at any time not to exceed thirty (30) days' written notice served on the contractor by registered or certified mail.

**010.25 Funding Out Provision:**

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

**010.30 Reduction in Contract Worker Hours**

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a

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budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

**010.35 Authorized to do Business in Kentucky:**

The contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

**010.40 Registration with the Secretary of State by a Foreign Entity.**

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by KRS 14A.9-010 to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under KRS 14A.9-030 unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in KRS 14A.9-010, the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within KRS 14A.1-070.

**For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.**

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx>

**010.45 Invoices for fees:**

The contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government.

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Pursuant to KRS 45A.695, no payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.

\*Invoice form is available on the Legislative Research Commission, Government Contract Review Committee website: <http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>

**010.50 Travel expenses, if authorized:**

The contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of the contract.

**010.55 Other expenses, if authorized herein:**

The contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of the contract.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by state government.

- Invoicing for fee: the contractor's fee shall be original invoice(s) and shall be documented by the contractor. The invoice(s) must conform to the method described in the specifications of the contract.
- Invoicing for travel expenses: the contractor must follow instructions described in the specifications of the contract. Either original or certified copies of receipts must be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.
- Invoicing for miscellaneous expenses: the contractor must follow instructions prescribed in the specifications of the contract. Expenses submitted shall be documented by original or certified copies.

**010.60 Purchasing and specifications:**

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The contractor certifies that he will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of interest laws and principles, "he" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "he" is construed to mean any person with an interest therein.

**010.65 Conflict-of-interest laws and principles:**

The contractor certifies that he is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

**010.70 Campaign finance:**

The contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

**01.075 Access to Records:**

The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

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In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See attachment)

#### **010.80 Protest**

Pursuant to KRS 45A.285, The Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective Vendors in connection with the solicitation or selection for award of a Master Agreement or Contract.

Any actual or prospective Vendor, who is aggrieved in connection with the solicitation or selection for award of a Master Agreement or Contract, may file protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed to

#### **Lori H. Flanery, Secretary**

Commonwealth of Kentucky  
Finance and Administration Cabinet  
Room 383, New Capitol Annex  
702 Capitol Avenue  
Frankfort, KY 40601  
Phone #: (502) 564-4240  
Fax #: (502) 564-6785

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

#### **010.85 Social security: (check one)**

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\_\_\_\_\_ the parties are cognizant that the state is not liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

\_\_\_\_\_ the parties are cognizant that the state is liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

**010.90 Violation of tax and employment laws:**

KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

\_\_\_\_\_ The contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

\_\_\_\_\_ the contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached.

**010.95 Discrimination:**

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Discrimination (because of race, religion, color, national origin, sex, age, or disability) prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age or disability.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or

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pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

7. The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**END OF PSC STANDARD TERMS AND CONDCTIONS**



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## SECRETARY'S ORDER 11-004

### FINANCE AND ADMINISTRATION CABINET

#### Vendor Document Disclosure

**WHEREAS**, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary to conduct a review of the records of a private vendor that holds a contract to provide goods and/or services to the Commonwealth; and

**WHEREAS**, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary during the course of an audit, investigation or any other inquiry by an Executive Branch agency that involves the review of documents; and

**WHEREAS**, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

**NOW, THEREFORE**, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, and 45A.230, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

- I. Upon the request of an Executive Branch agency, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a private vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.
- II. Upon the request of an Executive Branch agency, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits, investigations or any other formal inquiry where a dispute has arisen as to what documents are necessary to conclude the inquiry.
- III. Upon receipt of a request by a state agency pursuant to Sections I & II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.

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- IV. If the Determination concludes that documents are being wrongfully withheld by the private vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the private vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall effectuate any and all options that it possesses to obtain the documents in question, including, but not limited to, jointly initiating an action in the appropriate court for relief.
- V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.

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**By signing this contract, the parties agree to and accept the terms and conditions detailed above.**

**1<sup>st</sup> Party X:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Transportation Cabinet**

**2<sup>nd</sup> Party X:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Contractor**

**Approval as to form and legality:**

\_\_\_\_\_ **Date:** \_\_\_\_\_  
**KYTC Attorney**

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Order 11-004. (See attachment)

**010.80 Protest**

Pursuant to KRS 45A.285, The Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective Vendors in connection with the solicitation or selection for award of a Master Agreement or Contract.

Any actual or prospective Vendor, who is aggrieved in connection with the solicitation or selection for award of a Master Agreement or Contract, may file protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed to

**Lori H. Flanery, Secretary**  
Commonwealth of Kentucky  
Finance and Administration Cabinet  
Room 383, New Capitol Annex  
702 Capitol Avenue  
Frankfort, KY 40601  
Phone #: (502) 564-4240  
Fax #: (502) 564-6785

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

**010.85 Social security: (check one)**



the parties are cognizant that the state is not liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

\_\_\_\_\_ the parties are cognizant that the state is liable for social security contributions pursuant to 42

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U.S. Code, section 418, relative to the compensation of the second party for this contract.

**010.90 Violation of tax and employment laws:**

KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:



☒ The contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

☐ the contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached.

**010.95 Discrimination:**

Discrimination (because of race, religion, color, national origin, sex, age, or disability) prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

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Affidavit E Qualified Bidder Status

Solicitation/Contract #: 605 1200000447

**REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS**  
**CLAIMING QUALIFIED BIDDER STATUS**

**FOR BIDS AND CONTRACTS IN GENERAL:**

I. The bidder or offeror swears and affirms under penalty of perjury that the entity bidding, and all subcontractors therein, meets the requirements to be considered a "qualified bidder" in accordance with 200 KAR 5:410(3); and will continue to comply with such requirements for the duration of any contract awarded. Please identify below the particular "qualified bidder" status claimed by the bidding entity.

WE ARE NOT CLAIMING THIS STATUS  
 \_\_\_\_\_ A nonprofit corporation that furthers the purposes of KRS Chapter 163

\_\_\_\_\_ Per KRS 45A.465(3), a "Qualified nonprofit agency for individuals with severe disabilities" means an organization that:

- (a) Is organized and operated in the interest of individuals with severe disabilities; and
- (b) Complies with any applicable occupational health and safety law of the United States and the Commonwealth; and
- (c) In the manufacture or provision of products or services listed or purchased under KRS 45A.470, during the fiscal year employs individuals with severe disabilities for not less than seventy-five percent (75%) of the man hours of direct labor required for the manufacture or provision of the products or services; and
- (d) Is registered and in good standing as a nonprofit organization with the Secretary of State.

The BIDDING AGENCY reserves the right to request documentation supporting a bidder's claim of qualified bidder status. Failure to provide such documentation upon request may result in disqualification of the bidder or contract termination.

Signature: Shareholder/Attorney Printed Name: Scott White  
 Title: \_\_\_\_\_ Date: 5-14-2012  
 Company Name: Morgan Pottinger PSC  
 Address: 133 W. Short Lexington, KY 40507

Subscribed and sworn to before me by

Scott White Shareholder  
 (Affiant) (Title)

of Morgan Pottinger PSC this 14 day of May, 2012  
 (Company Name)

Alberta H. Willis

Notary Public  
 [seal of notary]

My commission expires:

7/29/13

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Attachment D

Solicitation/Contract #: 605 1200000447

**REQUIRED AFFIDAVIT FOR BIDDERS, OFFERORS AND CONTRACTORS CLAIMING  
RESIDENT BIDDER STATUS**

**FOR BIDS AND CONTRACTS IN GENERAL:**

The bidder or offeror hereby swears and affirms under penalty of perjury that, in accordance with KRS 45A.494(2), the entity bidding is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:

1. Is authorized to transact business in the Commonwealth;
2. Has for one year prior to and through the date of advertisement
  - a. Filed Kentucky income taxes;
  - b. Made payments to the Kentucky unemployment insurance fund established in KRS 341.49; and
  - c. Maintained a Kentucky workers' compensation policy in effect.

The BIDDING AGENCY reserves the right to request documentation supporting a bidder's claim of resident bidder status. Failure to provide such documentation upon request shall result in disqualification of the bidder or contract termination.

Signature: [Signature] Printed Name: Scott White  
 Title: Shareholder/Attorney Date: 5-14-2012

Company Name  
Address

MORGAN: Pottinger, PSC  
133 W. Short St  
LEXINGTON, KY 40507

Subscribed and sworn to before me by Scott White Shareholder/Attorney  
 (Affiant) (Title)

of MORGAN: Pottinger, PSC this 14<sup>th</sup> day of May, 2012.  
 (Company Name)

Alberta W. Willis

Notary Public  
[seal of notary]

My commission expires: 7/29/13

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the campaign of a candidate elected in the election last preceding the date of contract award that has jurisdiction over this contract.

As a duly authorized representative for the bidder, offeror, or contractor, I have fully informed myself regarding the accuracy of all statements made in this affidavit, and acknowledge that the Commonwealth is reasonably relying upon these statements, in making a decision for contract award and any failure to accurately disclose such information may result in contract termination, repayment of funds and other available remedies under law.

[Signature]  
 Signature  
Shareholder / Attorney  
 Title

Scott White  
 Printed Name  
5-14-2012  
 Date

Company Name  
 Address

Morgan: Pottinger, PSC  
1330 W. Short St.  
Lexington, KY 40507

Subscribed and sworn to before me by

Scott White Shareholder / Attorney  
 (Affiant) (Title)

of MORGAN: POTTINGER this 14<sup>th</sup> day of MAY, 2012  
 (Company Name)

Alberta M. Willis

Notary Public  
 [seal of notary]

My commission expires:

7/29/13